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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. —

UNITED STATES OF AMERICA, PETITIONER

v.

JOSEPH P. RYAN

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit, entered in the above case on July 1, 1955.

OPINIONS BELOW

The majority and dissenting opinions in the Court of Appeals (App., *infra,* pp. 3a–25a) have not yet been reported. The opinion of the District Court (R. 147–161), is reported at 128 F. Supp. 128.

JURISDICTION

The judgment of the Court of Appeals was entered on July 1, 1955 (App., *infra,* p. 26a). The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether respondent, the president of the International Longshoremen's Association, which has been designated by the longshore laborers of the Port of New York as their bargaining agent, is a "representative" of employees within the meaning of Section 302 (b) of the Labor Management Relations Act of 1947, which makes it unlawful for "any representative of any employees" to receive money from the employer of such employees.

STATUTES INVOLVED

The Labor Management Relations Act of 1947 (the so-called Taft-Hartley Act), 61 Stat. 136, provides in part:

Restrictions on payments to employee representatives

SEC. 302 [29 U. S. C. 186]. (a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce.

(b) It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value.

(c) The provisions of this section shall not be applicable (1) with respect to any money or other thing of value payable by an employer to any representative who is an employee or former employee of such employer, as compensation for, or by reason of, his services as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement or release of any claim, complaint, grievance, or dispute in the absence of fraud or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: *Provided*, that the employ[illegible] has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; or (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of

other employers making similar payments, and their families and dependents): *Provided,* That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of the employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in the event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the

trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities.

(d) Any person who willfully violates any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and be subject to a fine of not more than $10,000 or to imprisonment for not more than one year, or both * * *

Definitions

* * * * * *

SEC. 501 (3) [29 U. S. C. 142 (3)]. The terms "commerce," "labor disputes," "employer," "employee," "labor organization," "representative," "person," and "supervisor" shall have the same meaning as when used in the National Labor Relations Act as amended by this Act.

The National Labor Relations Act, 49 Stat. 449, as amended by Section 101 of the Labor Management Relations Act, provides in part:

Definitions

* * * * *

SEC. 2 (4) [29 U. S. C. 152 (4)]. The term "representatives" includes any individual or labor organization.

STATEMENT

On December 4, 1953, an indictment in three counts charging violations of Section 302 (b) of the Labor Management Relations Act was returned against respondent in the United States District Court for the Southern District of New York. Each count charged that respondent, being a representative of employees who were engaged in an industry affecting commerce, namely, President of the International Longshoremen's Association, did unlawfully, wilfully and knowingly receive money from employers of such employees (R. 3–4). After a trial without a jury, respondent was found guilty on each count and was sentenced to imprisonment for a period of six months on each count, the sentences to run concurrently, and was fined the sum of $2,500 (R. 162–163).

During the trial, it was established by stipulation that the respondent, at the times alleged in the indictment, was the duly elected president of both the International Longshoremen's Association (ILA), an international labor organization representing longshoremen and related classifications of labor on the waterfront in the Port of New York and in other ports throughout the

nation, and the Atlantic Coast Division of the ILA; that the ILA was the recognized bargaining agent of longshore employees in the Port of New York in 1950 and 1951; that respondent was a member of the Wage Scale Committee of the ILA which negotiated collective bargaining contracts with the New York Shipping Association (NYSA), an organization of employers who employed longshoremen in 1950 and 1951; that respondent, as principal executive officer for the ILA, signed the collective bargaining agreements entered into in 1950 and 1951 between the ILA and the NYSA; that J. Arthur Kennedy & Son, Inc., and Daniels & Kennedy, Inc., were, at the times alleged in the indictment, engaged in interstate commerce, were members of the NYSA, and were bound by the collective bargaining agreements entered into by the ILA and the NYSA (R. 21–25).

The Government adduced evidence to prove that in December of each year from 1946 to 1951, James C. Kennedy, president of both J. Arthur Kennedy & Son, Inc., and Daniels & Kennedy, Inc., made an annual cash payment of $1,000 to respondent in respondent's private office in New York City. A like payment of $500 was made in April 1951 (R. 54–58). The 1950 payment was made in a sealed envelope bearing the words: "Merry Christmas to Joseph P. Ryan from J. Arthur Kennedy & Son, Inc." (R. 132–135). An

envelope using a similar greeting was used to make the payment in December 1951 (R. 54–58).

The trial court, on the basis of the proof adduced, found that respondent had received the money payments alleged in the indictment, that he knew that the money came from the Kennedy corporations, and that he knew that those corporations employed longshoremen who were members of the ILA (R. 148–149).

The Second Circuit reversed respondent's conviction with directions to the trial court to dismiss the indictment on the ground that the respondent was not a "representative" within Section 302 (b) of the Labor Management Relations Act (App., *infra*, p. 19a). Judge Learned Hand, dissenting, could see "no reason for denying * * * the natural meaning of 'representative,' which would cover any official, or at any rate the president, of a union" (App., *infra*, p. 20a).

REASONS FOR GRANTING THE WRIT

In holding that the term "representative," as used in Section 302 (b) of the Labor Management Relations Act, does not embrace respondent who is both the president and chief executive officer of the International Longshoremen's Association, which has been designated by the longshoremen of the Port of New York to be their collective bargaining agent, the decision below unduly narrows the scope of the section and makes its prohibitions virtually meaningless. By limit-

ing the term "representative" as used in Section 302 (b) to mean only the individual or labor organization designated by the employees to be their collective bargaining agent, the Court of Appeals deprives the collective bargaining process of the protection of Section 302 against the betrayal of employees by faithless and venal representatives. Since labor organizations, as legal entities, can only act through their officers or agents, the effect of the opinion below is to exonerate any such officers or agents from criminal responsibility when they betray the trust of the employees comprising the union by accepting money from the employers with whom they are expected to deal at arm's length. The opinion thus holds that, while the word "representative" as used in Section 302 (b) includes a labor organization chosen as the collective bargaining agent of the employees, it does not cover the officers or agents of the organization through and by whom alone it is able to act.

We contend that the term "representative" as used in Section 302 (b) cannot be limited to collective bargaining agents designated by the employees but must be given the usual and ordinary meaning it possesses in everyday use to include any official or officer of a union who stands for and speaks in behalf of the employees who comprise the union. While the ILA, which has been designated by the longshoremen to be their collective bargaining agent, is admittedly a

"representative" embraced by Section 302 (b), we submit that the respondent who, as president and chief executive officer of the ILA, acts for the ILA is also a "representative" of the longshoremen from whom he derives his authority and for whom he speaks as president of the ILA.[1] Both the language and history of Section 302 compel this construction.

1. In this, as in all cases which turn on the meaning of a word, resort must first be had to the language of the statute in which it is used. *Adams Express Company* v. *Kentucky*, 238 U. S. 190, 199. Section 302 (b), here involved, *supra*, p. 2, makes it unlawful for "any representative of any employees" to accept money or other thing of value from their employer, and Section 501 (3) of Title V provides that the term "representative" shall have the same meaning as when used in the National Labor Relations Act, as amended. Section 2 (4) of that Act provides that the term representative "includes any individual or labor organization." On its face "any representative of any employees," which as defined includes "any individual," covers an individual labor union officer who speaks for the employees.

This conclusion is fortified by the exceptions set forth in Section 302 (c) to the prohibition of subdivision (b): (1) money paid by an employer

[1] For a district court holding contrary to that of the Court of Appeals below, see *United States* v. *Connelly*, 129 F. Supp. 786 (D. Minn.).

to a "representative who is an employee" as compensation for his services as an employee; (2) payments made in satisfaction of a judgment or award; (3) payments for goods purchased in the regular course of business; (4) "check off" payments under certain conditions "in payment of membership dues in a labor organization;"[2] (5) payments to a trust fund "established by such representative" if certain conditions are met, including the provision that the employees and employers be equally represented in the administration of such fund, "together with such neutral persons as the representatives of the employers and the representatives of the employees may agree upon."

It is clear from these exceptions that Congress did not apply the prohibitions of subsection (b) to labor organizations as entities while exempting the officers and agents through which they act. Some of the exceptions, such as the first, can relate only to payments to individuals; others, such as the fifth, clearly relate primarily to payments to organizations as representatives of the employees. Yet this same exception uses the term "representatives of the employees" in relation to administrators of the trust fund who are not necessarily the collective bargaining representatives of such employees. That is, much of subsection (c) is meaningless unless subsection

[2] Note the use in this subdivision of labor organization, rather than the term "representative."

(b) is read to apply both to labor organizations and to the individual officers and agents of such organizations. The majority opinion below itself recognizes that the first exception can relate only to individuals and attempts to give it meaning by noting that an individual can be a representative of employees. But it hardly seems likely that, in this important section, Congress was legislating specifically for the rare situation where a group of unorganized employees use an individual alone as their bargaining representative. It is much more reasonable, and much more in conformity with the normal meaning of the words used, to interpret the language as including both labor organizations and the individuals through whom the organizations act.

The fact is that, when Congress meant to cover only the collective bargaining representative, it used apt phraseology for that purpose. Thus throughout the Wagner Act, as amended, there are phrases qualifying "representative" when the collective bargaining representative is intended, *e. g.*, "representatives * * * for the purpose of negotiating,"[3] "to bargain collectively through representatives,"[4] "representative of the employees as provided in section 9 (a),"[5] "bargain

[3] Section 151, Title 29 U. S. C.

[4] Section 157, Title 29 U. S. C.

[5] Sections 158 (a) and 158 (b), Title 29 U. S. C. Section 9 (a) of the N. L. R. A. (29 U. S. C. 159 (a)) declares who shall be the exclusive collective bargaining agent of the employees.

with a labor organization as the representative of his employees,"[6] "bargaining representative for "employees."[7] Similarly, Section 303 of Title III of the Taft-Hartley Act, dealing with boycotts and other unlawful combinations, uses representative with modifying terms, *i. e.*, "labor organization as the representative," "representative of such employees under the provisions of section 9 of the National Labor Relations Act," and "bargaining representative." While it is true that the word "representative" so used imports the collective bargaining agent of the employees, such meaning stems, not from the word itself, but rather from the context in which it is used and the modifying words which surround it. If, as the Court of Appeals has held, "representative" is a word of art signifying only the designated collective bargaining agent of the employees, the modifying phrases would be unnecessary. It is only by giving the word its customary usage that meaning can be read into the phrases used in conjunction with it.

Whatever meaning is given to "representative" in Titles I and III of the Labor Management Relations Act is, by virtue of Section 501 (3) of Title V, applicable to Titles II and IV as well. There the term "representative" has none of the artful connotation with which the opinion below would endow it. In Title II, dealing with con-

[6] Section 158 (b), Title 29 U. S. C.

[7] Sections 158 (b) and 159 (a), Title 29 U. S. C.

ciliation of labor disputes, the word "representative" appears in Sections 204 (a) and 211 (a) and (b). Section 204 (a) uses the phrase "* * * employers and employees and their representatives * * *" Section 211 (a) uses the words "* * * interested representatives of employers, employees, and the general public * * *" and Section 211 (b) "* * * upon request of the Service, or employers, employees, or their representatives * * *." In this context, the word must be given its customary meaning in ordinary usage; it certainly is not used as a word of art signifying the collective bargaining agent. In Section 404 of Title IV the phrase "representatives of business, industry, finance, and labor" indicates that the term "representative," defined in Section 501 (3), must be given the customary and usual meaning it possesses in everyday usage.

To say that the word "representative" is a term of art meaning the collective bargaining agent designated by the employees unless the context indicates otherwise, is to ignore Sections 501 (3) and 2 (4) which purport to define the word and give it the same fixed meaning every time it is used in the Act. Rather the Act shows that when only the collective bargaining agent is intended, words of limitation are used with the term "representative." Only by giving "representative" the meaning it has acquired in daily use can it be understood consistently in the many and varied sections in which it is used.

2. The majority opinion below relies heavily upon the legislative history of Section 302, particularly on the fact that much of the discussion centered upon the need for regulating union welfare funds, especially that of the United Mine Workers (App., *infra*, pp. 15a–17a). That reasoning is so well answered by the dissenting opinion of Judge Hand below that little would be served by retracing that history here.[8] Judge Hand states (App., *infra*, p. 23a):

> * * * The principal discussion was indeed about contributions to a union's treasury; and that was true as well of the "Case Bill"—the predecessor of the Act before us—as of the Act itself. The absence of much discussion about preventing the kind of offence here prosecuted, seems to me not at all surprising; there could have been no opposition to it, except that in fact made: it might cover innocent payments. * * *

[8] The basic provisions of this section were introduced as an amendment from the floor by Senator Byrd to the Case Bill, H. R. 4908 on May 10, 1946. 92 Cong. Rec. 4809. The bill with the Byrd amendment passed both houses, was vetoed by the President and the veto was sustained in the House. 92 Cong. Rec. 5521–5522, 5739, 5946, 6674, 6678. With respect to the Taft-Hartley Act, Senator Ball proposed from the floor the amendment which became Section 302(b). 93 Cong. Rec. 4677, May 7, 1947. No such provision was in the House bill except in relation to unfair labor practices. See p. 21 in text. After a conference report, which, with respect to the section here involved, eliminated a definition section discussed in the text, *infra*, pp. 17–20, the bill passed both houses. 93 Cong. Rec. 6361, 6536. A presidential veto was overridden. 93 Cong. Rec. 7485, 7489, 7538.

Moreover, even with relation to the welfare funds, it is clear that Congress thought of payments to individual officers of a labor union as a payment to a "representative" of the employers. One of the expressed reasons for the necessity of controlling welfare funds was the fact that labor union officials, such as John L. Lewis, would have too much control over such funds. Thus, with respect to the predecessor Byrd amendment to the Case bill (see fn. 8), Senator Byrd stated (92 Cong. Rec. 5770):

> The amendment is designed to do one thing, and that is to prohibit an employer from paying or agreeing to pay any money or anything of value to a labor union *or to its representatives,* the expenditure of which would be controlled solely by the labor union or its representatives. It specifically provides for the establishment of health and welfare funds under joint control. [Emphasis added.]

See also 92 Cong. Rec. 4900. When Senator Ball introduced the amendment which became Section 302 (b) (see fn. 8), he said (93 Cong. Rec. 4678): 4678):

> Mr. President, the sole purpose of the amendment is not to prohibit welfare funds, but to make sure that they are legitimate trust funds, used actually for the specified benefits to the employees of the employers who contribute to them, and that they shall not degenerate into bribes.

> * * * I myself think that unless we make sure that such funds, when they are established, are really trust funds and are actually used for the benefit to employees specified in the agreement, there is very grave danger that the funds will be used for the personal *gain of union leaders,* or for political purposes, or other purposes not contemplated when they are established, and that they will in fact become rackets. [Emphasis added.]

Thus, individual representatives of labor unions, union leaders, were conceived as being within the reach of the section.

The majority below places considerable reliance upon the elimination of a definition of representative which had appeared both in the Byrd amendment to the Case bill and in the Ball amendment to the Taft-Hartley bill before the latter was reported by the Conference Committee (App., *infra,* pp. 14a–15a). The legislative history shows that such reliance is misplaced. When Senator Byrd first offered his amendment from the floor during debate on the Case bill on May 10, 1946, 92 Cong. Rec. 4809, it did not have a provision defining representative and did not have all the exceptions which presently appear in Section 302 (c).* Yet Senator Byrd stated:

> The term "representative" includes an individual who is a labor representative as

*The only exceptions in Senator Byrd's amendment were for payment of wages earned and amounts deducted for dues of a labor organization.

well as a labor organization [92 Cong. Rec. 4891].

During debate on the amendment he stated, 92 Cong. Rec. 4892–4895:

> I am endeavoring to strike at the attempt of *representatives* of labor to obtain payments from employers in excess of the salaries paid their employees, and use such payments in establishing funds over which no one but the labor representatives would have any control. * * *
>
> * * * * * *
>
> My amendment would prevent an employer from paying a royalty to *the representative of a union.* He would be clearly liable, under the provisions of this amendment, if he paid a royalty or other money *to the representative of a labor union,* the purpose of which was to bribe that representative. * * *
>
> * * * * * *
>
> Mr. President, I shall not labor this matter any longer at this time. It probably will be discussed further.
>
> I merely desire again to emphasize that all the amendment does is to prohibit *the representatives of a labor union* from receiving from an employer a specific sum of money. * * *.
>
> * * * * * *
>
> I will say that the only prohibition here is from making a payment to a representative of the employees, and that means *a representative of the union.* * * * [Emphasis added.]

It was in answer to arguments that this would prohibit proper payments, such as a contribution to an employee representative of a company baseball team, that Senator Byrd later modified his amendment so as to include the following definition (92 Cong. Rec. 5040–5041):

> (f) As used in this section * * *
>
> (3) "Representative" means any labor organization which, or any individual who, is authorized or purports to be authorized to deal with an employer, on behalf of two or more of his employees, concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work; and any other organization or fund of which a majority of the officers are representatives or are members of a labor organization or are elected or appointed by a representative.

This was a narrowing definition, intended to confine the section to those representatives of labor unions who acted as representatives of the employees concerning employment matters, and not in some other capacity. Senator Taft so stated during debate on the bill. 92 Cong. Rec. 5466.

The Ball amendment to the Taft-Hartley act carried over the definition as subsection (g), together with the more detailed exceptions which had been added during debate on the Byrd bill and presently appear in Section 302 (c), including the exception regulating trust funds. The House bill had had no such provision except as to unfair labor practices. See p. 21, *infra*. The Con-

ference Committee adopted the Senate version but dropped the definition section, stating merely (H. Rep. No. 510 (80th Cong., 1st Sess.), p. 67):

> The conference agreement adopts the provisions of the Senate amendment with minor clarifying changes.

Possibly the Conference Committee thought that the detailed exceptions in subsection (c) made unnecessary a special definition of the term "representative." In any event, the fact remains that, before there was any definition of any kind, Congress clearly thought of the language that is now in Section 302 (b) as covering union officials as well as the unions as such. As Judge Hand points out in his dissent (App., *infra,* p. 24a), "although the supplanted section did contain the word 'individual,' as well as 'labor organization,' it limited it to an 'individual' who was, or claimed to be, authorized to deal with an employer." If the elimination of the definition provision has any significance to the problem here involved, it is to make the prohibition against payments by an employer to a union officer more encompassing than it was without such definition.

3. As applied to the respondent Ryan, Section 302 prohibits a labor leader from accepting or receiving gifts or other forms of payments from employers with whom he deals on behalf of employees, except within the exceptions of subsection (c). As shown above (*supra,* pp. 16–18), Senators Byrd and Ball, the authors of Section

302, were concerned with the payment of bribes by employers to representatives of labor unions. That Section 302 prohibits all such payments with specified exceptions, without requiring proof of an offense in the nature of bribery, can only reflect Congressional awareness of the problems of proving that purported Christmas and birthday gifts are not bribes. Thus, the prohibition is simply another application of the rule that a trustee will not be permitted to deal with the trust res, so as to guarantee his undivided loyalty to those whose interests he represents. It is clear that Congress was aware of the relationship of such employer payments to union officials to unfair labor practices, and that this was coupled with concern over the administration of welfare funds.[10] For as H. R. 3020, 80th Cong., 1st Sess., the House version of the Taft-Hartley legislation, was passed by the House, Section 8 (a) (2) (B) provided that it should be an unfair labor practice for an employer to dominate or interfere with a labor organization "by giving, or offering to give, any reward, favor, or other thing of value to any person in a position of trust in such organization for the purpose of perverting his judgment or corrupting his conduct in respect to such organization."

---

[10] For a recent study of employers' payments to officers of respondent's union and the demoralizing effect of such payments upon employer-employee relationships, see the *Fourth Report of the New York State Crime Commission* (1953) pp. 12–14.

By limiting the term "representative" as used in Section 302 to labor organizations and excluding therefrom labor union officials and leaders through whom the union must act, the court below has emasculated a major part of an important statute in the field of labor relations contrary to the evident Congressional intent. In a field largely preempted by federal legislation, it would leave the federal government with no power to punish a labor leader who accepts payments from those with whom he must deal on behalf of the employees. Such an undesirable result is reached only by a strained construction of both the language and the legislative history of the section, both of which seem to us to compel a contrary conclusion. The cause is therefore one which should be reviewed by this Court.

CONCLUSION

It is therefore respectfully submitted that this petition for a writ of certiorari should be granted.

SIMON E. SOBELOFF,
Solicitor General.
WARREN OLNEY III,
Assistant Attorney General.
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RICHARD J. BLANCHARD,
Attorneys.

JULY 1955.

United States Court of Appeals for the Second Circuit

No. 322—October Term, 1954

Argued May 11, 1955. Decided July 1, 1955

DOCKET NO. 23546

UNITED STATES OF AMERICA, APPELLEE

v.

JOSEPH P. RYAN, DEFENDANT-APPELLANT

Before L. HAND, SWAN and FRANK, Circuit Judges

Appeal from a judgment of the United States District Court for the Southern District of New York, entered by Judge Palmieri, after a trial without a jury. Reversed.

J. Edward Lumbard (Arnold Bauman, George H. Bailey, of counsel) for appellee. Waldman & Waldman (Louis Waldman, Seymour M. Waldman and Martin Markson, of counsel) for appellant.

Defendant-Appellant, Joseph P. Ryan, President of the International Longshoremen's Association (hereafter called ILA) was indicted, under 29 U. S. C. Section 186 (b) and (d)—61 Stat. 302 (b) and (d)—on three counts, in that, on three separate occasions, he unlawfully, willfully and knowingly received sums in the aggregate of $2,500, from corporations employing members of the ILA. With the consent of defendant, the

case was tried without a jury. There was evidence that, on three occasions during 1950 and 1951, when defendant was president of the ILA and its Atlantic Coast District, he was visited by James C. Kennedy, president of Daniels & Kennedy, Inc. and of J. Arthur Kennedy & Son, Inc., and was given envelopes containing money. There was also evidence that the two corporations headed by Kennedy employed longshoremen who were members of the ILA. The trial judge found that the defendant knew he was receiving money, knew that he was receiving it from one who employed workers represented by the union of which he was president, and knew he was receiving it because he was a union official. The judge, holding defendant guilty on all counts, sentenced him to imprisonment for six months on each count (the sentences to run concurrently) and fined him $2,500. Defendant has appealed.

61 Stat. 136–162, The Labor Management Relations Act (the so-called Taft-Hartley Act) was enacted in 1947. Section 101 of that Act amended the National Labor Relations Act originally enacted in 1935. Section 2 of the National Labor Relations Act, as thus amended, reads in part as follows: "When used in this Act * * * (4) The term 'representatives' includes any individual or labor organization." (61 Stat. 137).[1]

Section 501 of the 1947 Act (61 Stat. 161) reads in part as follows: "When used in this Act * * * (3) The terms 'commerce,' 'labor disputes,' 'employer,' 'employee,' 'labor organization,' *'repre-*

[1] In fact, this provision continued unchanged the definition of "representatives" contained in the N. L. R. A. before its amendment in 1947.

sentatives,' 'person,' and 'supervisor' shall have the same meaning as when used in the National Labor Relations Act as amended by this Act."[2]

Section 302 of the 1947 Act (61 Stat. 157–158) reads as follows:

> *Restrictions on payments of employee representatives*
>
> (a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce.
>
> (b) It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value.
>
> (c) The provisions of this section shall not be applicable (1) with respect to any money or other thing of value payable by an employer to any representative who is an employee or former employee of such employer, as compensation for, or by reason of, his services as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement or release of any claim, complaint, grievance or dispute in the absence of fraud, or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing mar-

[2] Emphasis added.

ket price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: *Provided,* That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; or (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families and dependents jointly with the employees of other employers making similar payments and their families and dependents): *Provided,* That (A) such payments are held in trust for the purpose of paying, either from principal or income or both for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) The detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of the employees may agree upon and in the event the employer and employee groups deadlock on the administration of such

fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities.

(d) Any person who willfully violates any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and be subject to a fine of not more than $10,000 or to imprisonment for not more than one year, or both.

(e) The District Courts of the United States and the United States Courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of Section 17 (relating to notice to opposite party) of the Act entitled "an Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended (U. S. C., title 28, sec. 381), to restrain violations of this section,

without regard to the provisions of section 6 and 20 of such Act of October 15, 1914, as amended (U. S. C., title 15, sec. 17, and title 29, sec. 52), and the provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (U. S. C., title 29, secs. 101–115).

(f) This section shall not apply to any contract in force on the date of enactment of this act, until the expiration of such contract, or until July 1, 1948, whichever occurs first.

(g) Compliance with the restrictions contained in subsection (c) (5) (B) upon contributions to trust funds, otherwise lawful, shall not be applicable to contributions to such trust funds established by collective agreement prior to January 1, 1946, nor shall subsection (c) (5) (A) be construed as prohibiting contributions to such trust funds if prior to January 1, 1947, such funds contained provisions for pooled vacation benefits.[3]

FRANK, *Circuit Judge:*

1. Defendant correctly asserts that there was no evidence of extortion (or the like). Accordingly, he argues thus: Previous to the enactment of Section 302 (b), extortion had already been covered by the so-called Anti-Racketeering Act, 18 U. S. C. 1951; section 302 (b) should not be construed to include the receipt of money or property, absent extortion, since then it would be, or come close to being, void for agueness, and a court should, if possible, avoid an interpretation

[3] The references to the National Labor Relations Act are clearer in 61 Stat. 136–162 than in 29 U. S. C.

of a statute that would make it void or put it on the edge of the unconstitutional.

Defendant also argues that Section 302 (b) should not be construed to include representatives of unions because then it would overlap state statutes. Here defendant cites *Jerome* v. *United States*, 318 U. S. 101, 104–105, where the court said: "Since there is no common law offense against the United States * * *, the administration of criminal justice under our federal system has rested with the states, except as criminal offenses have been explicitly prescribed by Congress. We should be mindful of that tradition in determining the scope of federal statutes defining offenses which duplicate or build upon state law. In that connection, it should be noted that the double-jeopardy provision of the Fifth Amendment does not stand as a bar to federal prosecution though a state conviction has already been obtained * * *. That consideration gives additional weight to the view that where Congress is creating offenses which duplicate or build upon state law, courts should be reluctant to extend the deferred offenses beyond the clear requirements of the statute."

We have not found it necessary to consider either of those contentions, since we rest our decision on another ground. 3. Defendant's principal argument is that he was not a "representative of any employees" within the meaning of Section 302 (b). His reasoning is as follows:

> Section 501 (3) provides that "when used in this Act, the term 'representative' is to have the same meaning as when used in the National Labor Relations Act as

amended by this Act." Section 2 of the National Labor Relations Act, as thus amended, provides that, when used in that amended Act, the "term 'representative' includes any individual or labor organization."

Throughout the NLRA, as thus amended, "representative" is used, with reference to a representative of employees, as a word of art, to mean solely a labor organization or an individual (or individuals) designated by a majority of the employees, in an appropriate unit, as their exclusive bargaining representative.

This interpretation of "representative" in Section 302 (b) is in complete accord with the primary purpose of Congress in enacting Section 302 as an entirety, i. e., to render unlawful the creation of union welfare funds unless restricted as provided in Section 302 (c) (5).

In the case at bar, a union, ILA, was the exclusive bargaining representative. Consequently, here Section 302 (b) could apply to the union only, not to defendant who was but a representative of the representative, i. e., of the union.

Accordingly, defendant did not violate subsection 302 (b).

The government, on the other hand, contends that "representative" in subsection 302 (b) must be given its everyday, commonplace meaning; that, therefore, it includes a representative of a union; and that defendant comes within that definition. If subsection 302 (b) stood alone, that contention would be highly persuasive.*

* If, however, we accepted that interpretation, we would have to consider defendant's argument noted in point I of this opinion.

That subsection, however, is not an island but part of a statutory continent. To understand the words "representative of any employees" in subsection (b) of Section 302, we must look to Section 501 (3) which instructs us that "representative" in Section 302 (b) has the same meaning "as when used in the amended National Labor Relations Act." In Section 2 (4) of that Act, we find the "term 'representative' includes any individual or labor organization." We thereby learn what "representative" includes. To understand what it means, with reference to a "representative of any employees," we must heed Section 501 (3) and turn to the many sections of the amended NLRA where "representative" is so used.[5] We discover that there invariably it means a "representative" selected by a majority of the employees, in an appropriate unit, as their exclusive bargaining representative. (Only once is it used otherwise, i. e., in Section 2 (1) where, defining "person," the Act includes a "legal representative.") The question then arises whether an "individual" can be an exclusive bargaining representative. Clearly he can. The Labor Board has so interpreted the Act.[6]

We see nothing in the exception clauses of Section 302 (c) at all at odds with defendant's

[5] See Sections 1, 2, 7, 8a (3), 8 (a) (5), 8 (b), 8 (b) (4), 8 (d), 9 (a), 9 (b), 9 (c) (1) and 9 (g).

[6] See *The Robinson-Ransbottom Pottery Company*, 27 N. L. R. B. 1093 (1940); *The Louisville Sanitary Wiper Company, Inc.*, 65 N. L. R. B. 88 (1945). These cases arose under the N. L. R. A. before its amendment in 1947; but that amendment did not change the statutory definition of "representative."

contention: Clauses (2), (4) and (5) obviously are not. Clauses (1) and (3) apply to an individual employee who is also an exclusive bargaining agent—and thus himself a "representative." We think it significant that when, in the 1947 Act, Congress wanted to refer to individuals acting for a union, it spoke of them not as "representatives" of a "labor organization," but as "agents" of such an organization; see Section 8 (b)—61 Stat. 141—of the amended N. L. R. A., a subsection added by the 1947 Act.

The government argues that, in every instance where "representative" is used in the amended N. L. R. A. to designate a "representative" of employees, the word is qualified by the word "bargaining" or by the phrase "subject to Section 9 (a)." That is not true: Section 8 (b) (4) (B) and Section 8 (d)—61 Stat. 141–142—use the words "representative of his employees" or "representative of the employees" without any qualification, and Section 1 (61 Stat. 137) and Section 7 (61 Stat. 140) speak of "representatives of their own choosing."

The following further suggestion is advanced: (1) As defined in Section 2 (5) of the N. L. R. A.,[7] "labor organization" can be interpreted to cover not only an exclusive bargaining agent but also either any group or any individual whatever to

[7] This subsection reads as follows: "The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

whom any employees give authority to deal with their employer "concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work." (2) Accordingly, since Section 2 (4) provides that "representatives" include "any individual or labor organization," an individual who is not an exclusive bargaining agent can be a "representative."

We reject that suggestion for these reasons: (1) It involves a straining of the language of Section 2 (5) to have the term "labor organization," which normally imports a collective body or group, cover an individual. (2) More important, if "labor organization" includes an individual, then Section 2 (4) uses the word "individual" redundantly when it says that "representatives" include "any individual or labor organization." For the suggested interpretation of Section 2 (4) would cause it to read, in effect, thus: "The term 'representatives' include (a) an individual or (b) an individual or a group having authority from any employees to deal with their employer."

3. The government makes much of the legislative history. But, so far as it illuminates, it tends strongly to support defendant's contention. This appears from the following:

A forerunner of the 1947 Act was the so-called Case Bill, H. R. 4908, reported on the floor of the House of Representatives on January 28, 1946 (92 Cong. Rec. 490). After this bill passed the House, on February 7, 1947 (Cong. Rec. 1059, 1118), the Senate Committee reported it on April 15, 1946. On May 16, 1946, Senator Byrd submitted an amendment (92 Cong. Rec. 4809) en-

titled "Restrictions on Payments to Labor Organizations." This Byrd amendment (except for the definition of "representative" noted, *infra*) is substantially the same as the present Section 302. The Case Bill, including the Byrd amendment, was passed by Congress but was vetoed by the President, and Congress failed to overrule the veto.

One year later, as part of the comprehensive labor bill then under consideration, an amendment similar to the Byrd amendment was introduced in the House but failed of passage. The Senate Labor Committee reported out the comprehensive labor bill without any such amendment. However, five members of that Committee, including Senators Taft and Ball, filed a Supplemental Report (to the Committee's report) in which they urged an amendment quite like the Byrd amendment of the previous year. On May 7, 1947, Senator Ball, for himself and three other Senators, introduced the amendment on the Senate Floor (93 Cong. Rec. 4667), and it was adopted as Section 302 of the Senate bill.

Like the Byrd amendment, Section 302, as adopted by the Senate, included the following subsection (g):

> For the purposes of this section, the term "representative" means any labor organization which, or any individual who, is authorized or purports to be authorized to deal with an employer, on behalf of two or more of his employees, concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work; and for the purposes of section 301 includes any other organization or fund of,

> which some of the officers are representatives or are members of a labor organization or are elected or appointed by a representative.

This definition was susceptible of the interpretation that "representative" included a union official. Senator Ball, explaining that paragraph, (g), said (93 Cong. Rec. 4678): "Subsection (g) is simply a definition of the term 'representative' as used in the section, which is required to be somewhat different from the definition of 'representative' in the National Labor Relations Act."

But the Joint Conference Committee, which ironed out the differences between the House and Senate bills, significantly omitted that definition and, instead, added the word "representative" to the list of terms defined by Section 501 (3) as having the same meaning as when used in the amended N. L. R. A. In this form, the bill passed both houses of Congress and was enacted over a Presidential veto.

Before the Joint Conference Committee made that change, Senator Ives, in debate, had said: "* * * I * * *, should like to point to section (b) * * * I wish to inquire whether that could be construed in any way as affecting Christmas presents or birthday presents or anything of that type. The language is rather broad, and it appears to me to be vague" (93 Cong. Rec. 4748). Senator Ives later was a Senate member of the Joint Conference Committee which made the change.

Most of the Congressional debates and Committee reports concerning Section 302, and concerning the Byrd amendment in the previous

Congress, were devoted to the subject of the regulation of union welfare funds. They show that this section was prompted by the demand of the United Mine Workers Union for an employer contribution to a welfare fund of 10¢ per ton of coal, a fund administered by the union alone with no restrictions on its discretion.* The following statements from the debates on the Ball amendment are illustrative:

Senator BALL. "Mr. President, the pending amendment deals with so-called welfare funds, which are becoming increasingly prominent in negotiations between unions and employers. * * * Mr. President, the sole purpose of the amendment is not to prohibit weltare funds, but to make sure that they are legitimate trust funds. * * * " (93 Cong. Rec. 4678).

Senator BYRD. "It [the amendment] has a specific purpose, which is to prohibit the labor unions from requiring welfare funds to be paid into the treasuries of the labor unions" (93 Cong. Rec. 4678).

Senator TAFT. "The occasion of the amendment was the demand by the United Mine Workers of America that a tax of 10¢ a ton be levied on all coal mined, and that the tax levied be paid into a general welfare fund to be administered by the union for practically any purpose the union considered to come within the term 'welfare.' * * * The purpose of the amendment is to require that the fund shall be established in definite detailed form. * * * The purpose is to prevent

*Also discussed was a limitation on checkoffs to labor organizations.

the abuse of welfare funds. * * * This amendment is, in effect, a provision to prevent the abuse of the right to establish such funds by collective bargaining * * *" (93 Cong. Rec. 4746–47).

Sen. Rep. 105 on S. 1126, Supplemental Views, p. 52 (Senators Taft, Ball, Dom...l, Jenner, H. Alexander Smith): "Limitation on Abuse of Welfare Funds. * * * The necessity for the amendment was made clear by the demand made last year on the part of the United Mine Workers. * * * "

The government points to a few isolated expressions in the Supplemental Report in 1946, and during the debates in 1946 and 1947,[9] indicating that Section 302 (b) may have been intended (1) to apply to union representatives and (2) to cover extortion.[10] Those relative to "extortion" can be read as characterizing such demands on employers as those made by the United Mine Workers for the establishment of unregulated union trust funds. Thus when Senator Taft (93 Cong. Rec. 4746) mentioned "a case of extortion or a case where the union representative is shaking down the employer," the context suggests that he had in mind the alleged practice of some unions of bargaining for their own benefit rather than for the benefit

[9] Many of them emanated from Senators or witnesses interested in defeating Section 302.

[10] The Supplemental Report (1946) said: "The amendment makes extortion illegal."

Senator Taft in 1947 (93 Cong. Rec. 4746) spoke of "a case of extortion or a case where the union representative is shaking down the employer."

of the employees they represented. These unions would exert marked pressure to gain employer contributions to an uncontrolled fund; it was said that such funds would then be used as union "slush" or strike funds. The grant of such employer contributions, it was urged, would be accepted by the union as the price of a collective bargaining agreement in lieu of other benefits which the workers should have received. This fear was expressed by Senator Ball, in introducing his amendment, as follows:

> Mr. President, the sole purpose of the amendment is not to prohibit welfare funds, but to make sure that they are legitimate trust funds, used actually for the specified benefits to the employees of the employers who contribute to them and that they shall not degenerate into bribes. * * * I have heard of many cases in which unions have even relinquished wage demands in order to secure a welfare fund with a percentage of the payroll paid into the welfare fund established, and employers have frequently agreed to that procedure. (93 Cong. Rec. 4678 (1947).)

In any event, the significant fact is that all those expressions occurred before the Joint Conference Committee had deleted paragraph (g) of Section 302 (above quoted) separately defining "representatives," and had substituted the definition now contained in Section 501.[10a]

[10a] The Joint Conference Committee reported that Section 302 of the Senate bill "was adopted with minor clarifying changes." We see no conflict between the significance we have attached to the changes made by that Committee and the report's description of those changes as

Since defendant was not a "representative" within Section 302 (b) as we interpret it, we reverse with directions to dismiss on the merits.

Reversed.

HAND, *Circuit Judge* (dissenting).

As my brothers say, § 142 (3) of Chapter 49, U. S. Code, which is part of Subchapter I of the "Labor-Management Relations Act, 1947," defines the term, "representative," by reference to its use in Subchapter II—the National Labor Relations Act. It also defines "labor organizations" in the same way. Although the word, "representative," is repeatedly used in Subchapter II, I can find no definition of it anywhere except that § 152 (4) says that it includes "any individual or labor organization"; from which it follows that the Act understands that "representatives" of employees may be other than a "labor organization." Section 152 (5) defines a "labor organization" as "any organization of any kind" (which I take to require a group of individuals) "or any agency or employee representation committee or plan in which employees participate and which exists for the purpose in whole or in part of dealing with employers, concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work." I should suppose that, read as it should be as in contrast to "any organization of any kind," this last language would include an individual to whom employees

"minor." For, in relation to the general purpose of the section—the regulation of union welfare funds—the changes are of little import, and only if the Section is applied to other kinds of payments do they assume importance.

give authority to deal with their employer. Therefore I cannot see any escape from saying that a single person may be a "labor organization"; and, if so, then there may be "individuals" who are "representatives" of employees and yet who are not authorized to negotiate with employers. Hence, I can see no reason for denying what to me is the natural meaning of "representative," which would cover any official, or at any rate the president, of a union. Of course § 186 might still be confined to payments made into the union treasury, but that must be for other reasons than that they are payments to a "representative." I of course agree that the section does cover payments into the union treasury (subsections (c) (4) and (c) (5) prove that), but the accused must go further, and does: for he argues that the section covers no payments but those made in the course of negotiation and to a bargaining agent of the union for the union. But I start with the premise, that, so far as concerns definitions, there is no reason why we should not understand the word in its ordinary sense; and it is certainly irrelevant that the Act uses it in most instances—for example, in § 158 (d)—in a limited sense.

However, I go further, because I find evidence in subsection (c) that it does not exclude union officials, though they are not engaged in bargaining. That subsection is the provision that excepts payments which without it would fall within subsections (a) and (b). Subsections (c) (4) and (c) (5) are indeed confined to payments made to a union, and I think that the same is true of subsection (c) (2), although that is not quite

so certain. On the other hand subsections (c) (1) and (c) (3) presuppose that § 186 covers payments into the pocket of a union official for his own use; because, since, as I have just said, the purpose of subsection (c) is to state exceptions to the preceding subsections (a) and (b), the payments that subsection (c) covers would fall within (a) and (b) except for the exception. Hence, subsections (a) and (b) do cover payments not made into the union treasury, but directly to a "representative," who need not himself have any authority whatever to negotiate for the union. The accused answers that these subsections are only to protect those, who may be negotiating for the union, when they take their wages or have an ordinary market transaction with the employer. So far as the "representatives" are only the bargaining agents of a union, that construction makes the subsections only cautionary, and does not answer the objection that, not only are they called exceptions, but they are indiscriminately mixed with indubitable exceptions. On the other hand, if they are treated as true exceptions (as they may be if confined to cases where the individual negotiators are themselves the union) although the formal difficulty is avoided, the occasions on which the subsections would apply are so much reduced that it is most unlikely that Congress would have thought it worth while to provide for them. It must very rarely be true that one or two or three individuals are in fact a "labor organization"; and it is substantially impossible, I submit, that Congress would have deemed the possible accumulation of the union funds of such "labor organizations" an

appreciable evil. For the foregoing reasons I do not think that there is the least textual reason to confine § 186 to payments made to union "representatives" into the union treasury as a result of bargaining negotiations.

As I have said, that was indeed one of the objects of the Act, and it was particularly present in the mind of Congress at the time, for in 1947 the "Mine Workers Union" was attempting to collect a large "war chest." But that does not mean that prevention of such accumulations was the only object of the Act. Moreover, in order to affirm the conviction it is not necessary to suppose that § 186 was directed against the bribery of union officials, although, if I am right, it certainly does cover bribery. (Incidentally, if bribery had been the target, the penalty would almost certainly have been more than a year's imprisonment.) An altogether adequate purpose, and one which does not involve the textual difficulties I have discussed, is that in addition to preventing employers from helping to fill a union's "war chest," Congress wished to prevent employers from tampering with the loyalty of union officials, and disloyal union officials from levying tribute upon employers. The first was the situation at bar; the employer did not bribe the accused; it did what has been done, time out of mind, when one person, knowing that he is likely to have continuous dealing with another, in which the second person will be acting as a fiduciary, wishes to insure a friendly approach to the fiduciary; and makes him presents or does him favors, or in other and less palpable forms tries to turn the edge of his allegiance. Although

§ 186 deals only with the grosser forms of this evil, it presupposes a more than ordinary fiduciary defection. A union official has a double loyalty: first, he owes it to the members of his union, who have chosen him to represent them; next, he owes it to those employees, who are not members, but in favor of whom the law has nevertheless imposed on him an equal duty. Surely, it was altogether likely that Congress should wish to put an end to such abuses by both parties—the unions and the employers.

Last is the question of the history of the section's passage through Congress. The principal discussion was indeed about contributions to a union's treasury; and that was true as well of the "Case Bill,"—the predecessor of the Act before us—as of the Act itself. The absence of much discussion about preventing the kind of offence here prosecuted, seems to me not at all surprising; there could have been no opposition to it, except that in fact made: it might cover innocent payments. Besides, the question here at issue did not wholly escape notice. Take, for example, what Senator Taft said about § 186 (a): "That is, it may be said, in a case where the union representative is shaking down the employer." Or consider Senator Ives's inquiry whether § 186 (b) "could be construed in any way as affecting Christmas presents, birthday presents or anything of that type." Both he and Senator Pepper voted against the bill, presumably because they thought that for this reason it went too far. I do not forget that the section defining "representative," was at that time more specific than § 142 (3), which eventually supplanted it in con-

ference; but the amendment makes rather against the accused than in his favor, if we treat subsections (4) and (5) of § 152 as incorporated in § 142 (3). For, although the supplanted section did contain the word "individual," as well as "labor organization," it limited it to an "individual" who was, or claimed to be, authorized to deal with an employer; and § 152 (4) does not do so, as I have said.

However, even if the debates threw more light than they do on the meaning of the words, I should hesitate to accept them as an authoritative gloss. It is one thing to look for that purpose to the reports of one or both of the Houses of Congress; for it is not unreasonable to believe that those members, who are not content to let the words speak for themselves, may have relied upon the report as authoritative; and in any event that is well settled law.[11] On the other hand, although it is true that courts have repeatedly mentioned the debates that attended the passage of a bill as relevant to its interpretation, the decisions are so much at variance that I find it impossible to extract any safe principle. The words of the sponsor of a bill are presumptively entitled to be considered,[12] although it is impossible to know how far those who voted for it may

[11] *Binns* v. *United States*, 194 U. S. 486, 495; *Lapina* v. *Williams*, 232 U. S. 78, 90; *United States* v. *St. Paul M. & M. Ry.*, 247 U. S. 310, 318; *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443, 474, 475; *Wright* v. *Vinton Branch*, 300 U. S. 440, 463, 464.

[12] *Schwegmann Bros.* v. *Calvert Distillers Corp.*, 341 U. S. 384, 394, 395; *United States* v. *St. Paul M. & M. Ry.*, *supra* (247 U. S. 310, 318); *Duplex Printing Press Co.* v. *Deering*,

have acted on the faith of them; but the remarks made in general debate are not to count.[13]

There does indeed remain the question raised by Senator Ives and Senator Pepper: i. e., whether § 186 forbids a Christmas present to a union official who chances to be a friend, or even a relative, of the employer. To draw lines is always difficult; and the one sure way to miss the meaning of a statute is to read the words out of their context and as you find them in the dictionary. Nearly every statute has its penumbra, and this one is not an exception; but it would be most unreasonable to defeat a part of its purpose, because there is no a priori rule for deciding when a payment was purely donative, and when it was actuated by the prospect of possible benefits to come.

As my view is not to prevail, I shall not discuss the other objections that the accused raises, except to say that I have considered them, and that they have not convinced me that any error was committed that would justify a reversal. I would affirm the conviction.

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supra (254 U. S. 443, 474, 475); *McCaught* v. *Hersey*, 283 U. S. 488, 493, 494; *United States* v. *Great Northern Ry.*, 287 U. S. 144, 154, 155; *Wright* v. *Vinton Branch*, *supra* (300 U. S. 440, 463, 464); *Schwegmann Brothers* v. *Calvert Distillers Corp.*, *supra* (341 U. S. 384, 394, 395).

[13] *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290, 318, 319; *Dunlap* v. *United States*, 173 U. S. 65, 75; *Lapina* v. *Williams*, *supra* (232 U. S. 78, 90).

United States Court of Appeals for the Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 1st day of July one thousand nine hundred and fifty-five.

Present: Hon. Learned Hand, Hon. Thomas W. Swan, Hon. Jerome N. Frank, Circuit Judges.

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

JOSEPH P. RYAN, DEFENDANT-APPELLANT

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is reversed and action remanded with directions to dismiss on the merits in accordance with the opinion of this Court.

(S) A. DANIEL FUSARO,
Clerk.

Filed July 1, 1955.